

A Perspective on the Future Directions of RCRA and CERCLA

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Overview

- RCRA
 - Definition of Solid Waste
 - RCRA Conservation challenge
- CERCLA
 - National advisory committee on environmental policy and technology (NACEPT)
 - Superfund program review
- Overarching
 - Institutional Controls
 - One Cleanup Program
 - EPA Enforcement Priorities

ABR Rule

- In 2000, the D.C. Circuit issued its opinion in the Association of Battery Recyclers or ABR decision. The court invalidated an EPA rule because the court concluded that EPA had overextended its jurisdiction over certain materials being recycled.
- As a result of the ABR decision, and in an effort to promote more recycling, EPA has examined its approach to regulating recycling/reclamation and an EPA proposal amending the definition of solid waste came out on October 28, 2003. 68 Fed. Reg. 61,558.

RCRA

EPA Proposal

- A Two Part Test for determining whether a material being recycled/reclaimed or was being discarded.
- Part One: EPA proposes drawing a "bright line" for determining whether a secondary material is being recycled or disposed. The bright line is whether the material is generated and reclaimed in a "continuous process within the same industry."

"Bright Line"

- Same industry is defined as being within the same 4 digit North American Industry Classification System, or NAICS, the successor to SIC codes.
- Excluded from the EPA proposal are entities who fall under the NAICS code for waste management businesses. For example, a waste solvent collected by a solvent reclaimer from a variety of different industries would still be considered a solid waste.

Second Part of the Test

- The second part of the test is that the material must be “legitimately recycled.” EPA is proposing four legitimacy criteria for evaluating whether a material is being legitimately recycled.
 - Whether the secondary material is managed as a valuable commodity?
 - Whether the secondary material provides a useful contribution to the recycling process or product of the recycling process?
 - Whether the recycling process produces a valuable product or intermediate?
 - Whether the product has significant, or significantly elevated, hazardous constituents not found in an analogous product?

Next Steps

- The original comment submission deadline was January 26, 2004, but that deadline was extended to February 25, 2004 upon request by a commenter. 68 Fed. Reg. 74,097.
- This proposal has sparked considerable interest and EPA has received numerous comments from a wide variety of stakeholders. EPA will need to review the comments before projecting any potential date for issuance of a final rule.

"Beyond RCRA"

RCRA Conservation Challenge

- A Vision of the Future:
 - Materials that were once considered wastes suitable only for landfilling are now continually reused and recycled...



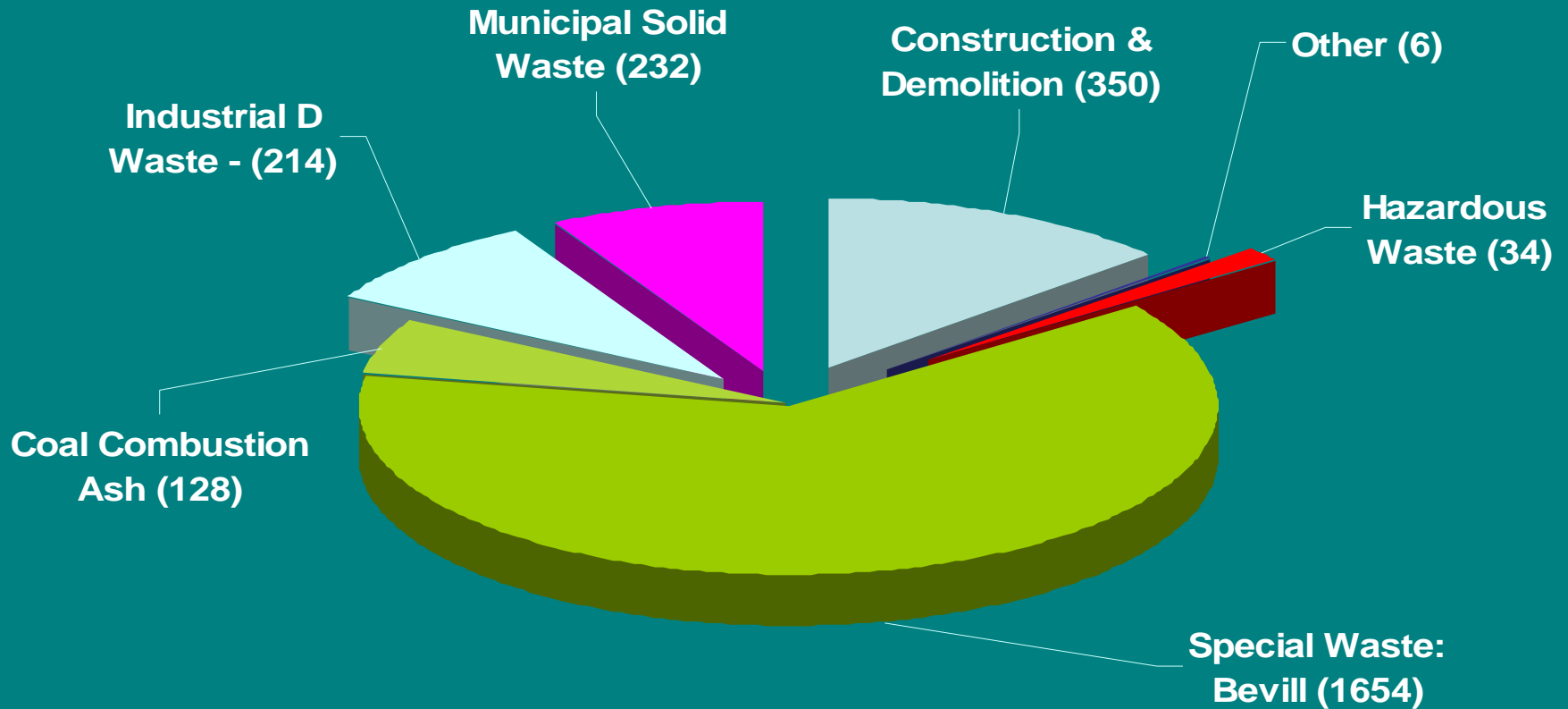
RCRA

RCRA Conservation Challenge

- It is likely that the current distinctions between wastes and materials (which in a large part are regulatory in nature) will become less meaningful.

The RCRA Program

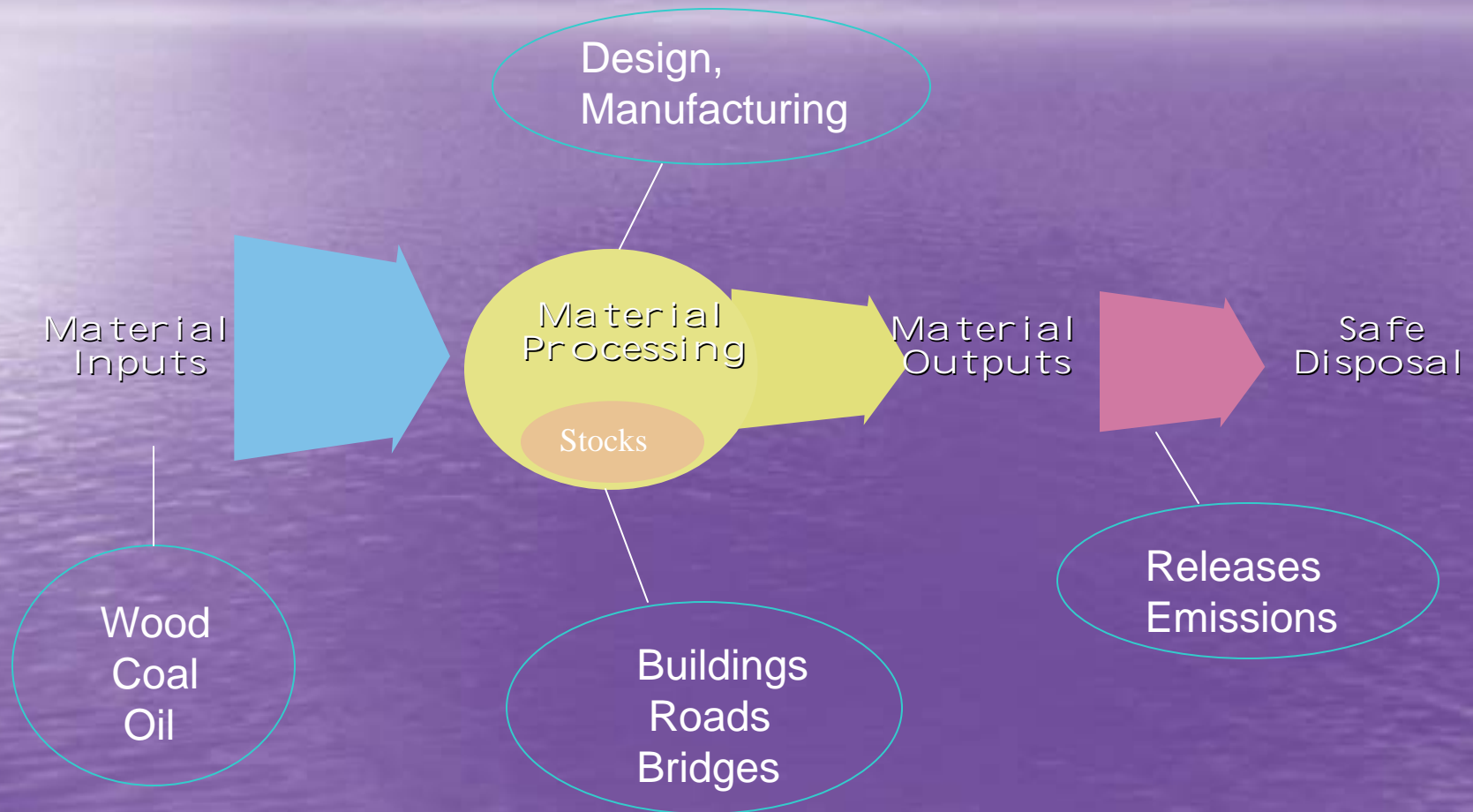
Total Quantity of Wastes (2.6 billion tons, excluding wastewaters)



RCRA

Cradle to Grave

Inefficient Materials Management



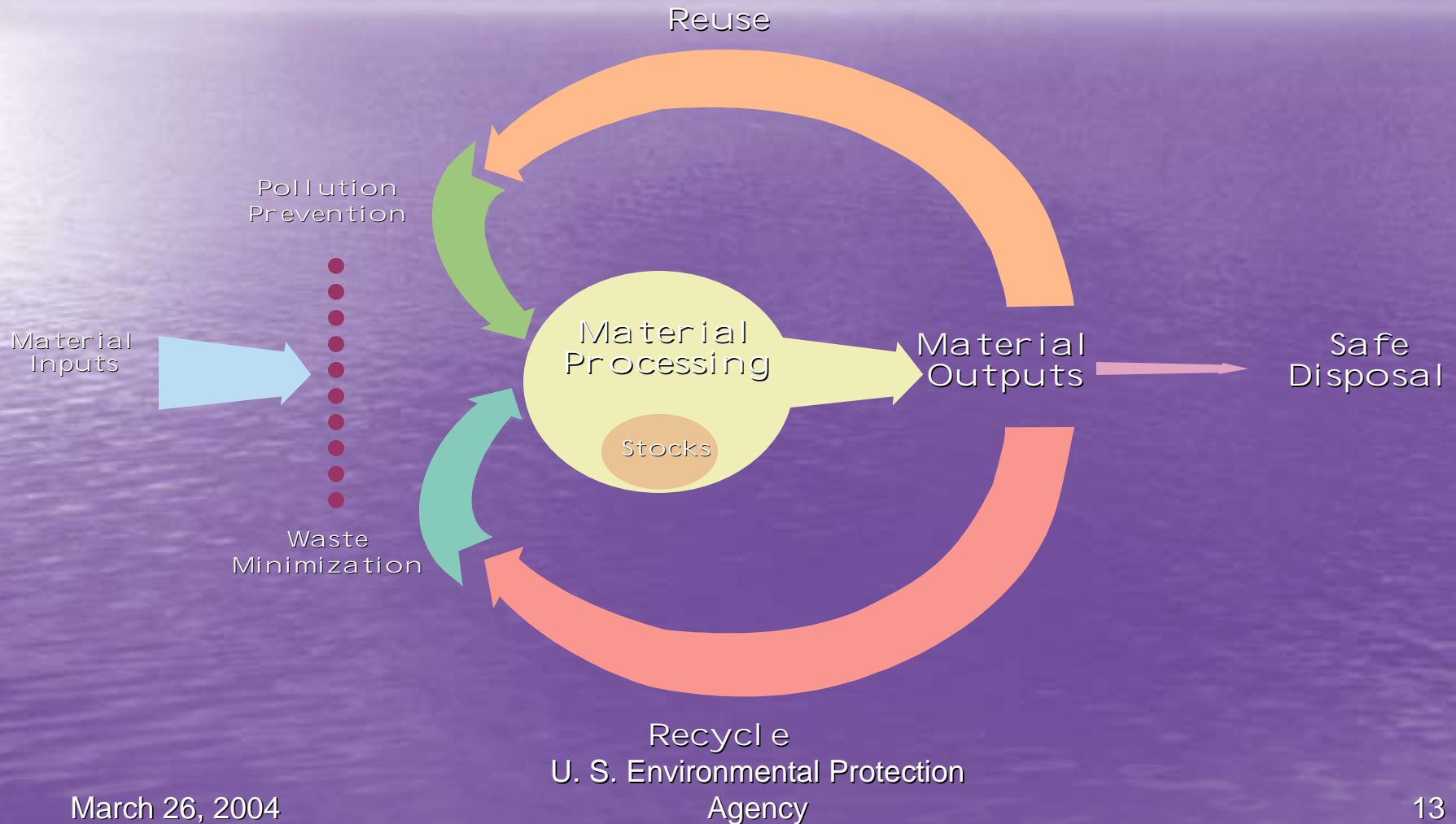
What Type of System Do We Need For the Future?

- A focus on materials management, not just waste management.
- We need to make significant gains in:
 - Pollution prevention, recycling, reuse of materials
 - Reducing the use of toxic constituents
 - Conserving energy and materials

RCRA

Cradle to Cradle

Efficient Materials Management



RCC Partnerships

- Many different types of partnerships can be developed – informal to formal
- Started with 9 clusters:
 - Electronics, Priority Chemicals, Green Buildings, C & D Debris, Industrial D Wastes/Materials, Paper, Hospitals, Schools, Tires
- New clusters being considered; discussing priorities with key stakeholders

Rcra

How to become a rcc partner

- Five Steps to Becoming a RCC Partner
 - Identify environmental problem and define challenge
 - Identify and dialogue with partners
 - Identify and develop solutions, objectives, targets, implementation plan & timeline
 - Announce partnership & agreement
 - Publicize reaching major milestones
- Contact: hockey.david@epa.gov or (703) 308-8846

RCRA

Safer Schools Program

- Program to remove excess chemicals from secondary schools
 - Expands and builds on successes of many Regional, State and Local efforts
 - Focus on school districts with older schools, limited budgets and little infrastructure

National Waste Min Partnership Program (NWMPP)

- RCC's key program to reducing priority chemicals
 - Focused on 30 highly-toxic, priority chemicals found in waste and products.
 - Voluntary approach to reductions.
 - Regions and States taking the lead on facility assistance.

NACEPT Superfund Subcommittee

- this Federal Advisory Committee Act (FACA) group, established in the Spring of 2002, was commissioned to provide consensus-based recommendations on three major issues:
 - the role of the National Priorities List,
 - the role of Superfund at complex and expensive sites, called "megsites,"
 - measurement of program performance.

CERCLA

NACEPT

- The NACEPT Superfund Subcommittee disbands March 31, 2004
- The Subcommittee draft report will be sent to the full NACEPT Council for review and final approval
- The final NACEPT report is expected in the May/June 2004 time frame.
- <http://www.epa.gov/oswer/SFsub.htm>

CERCLA

super fund Program Review

- Commissioned in November 2003 by acting deputy administrator johnson
- Goal to identify specific options for using super fund resources more efficiently in order to accomplish more site cleanups with existing resources
- Plan to complete the study this month
- Intended To complement the work being done by Nacept

Overarching Institutional Controls

- An important component of many remedial decisions under all the cleanup programs

Overarching IC Challenges

- There is general agreement that:
 - Many remedies rely on ICs to protect human health and to protect the integrity of expensive remedies
 - ICs are often critical to get a site back into productive use
 - ICs are often implemented monitored and enforced by different parties (Federal, State, Local agencies and industry)
 - ICs are often necessary at site for extended periods of time
 - For ICs to be effective, structured oversight is required
 - A single party often does not have access to most current data on all ICs

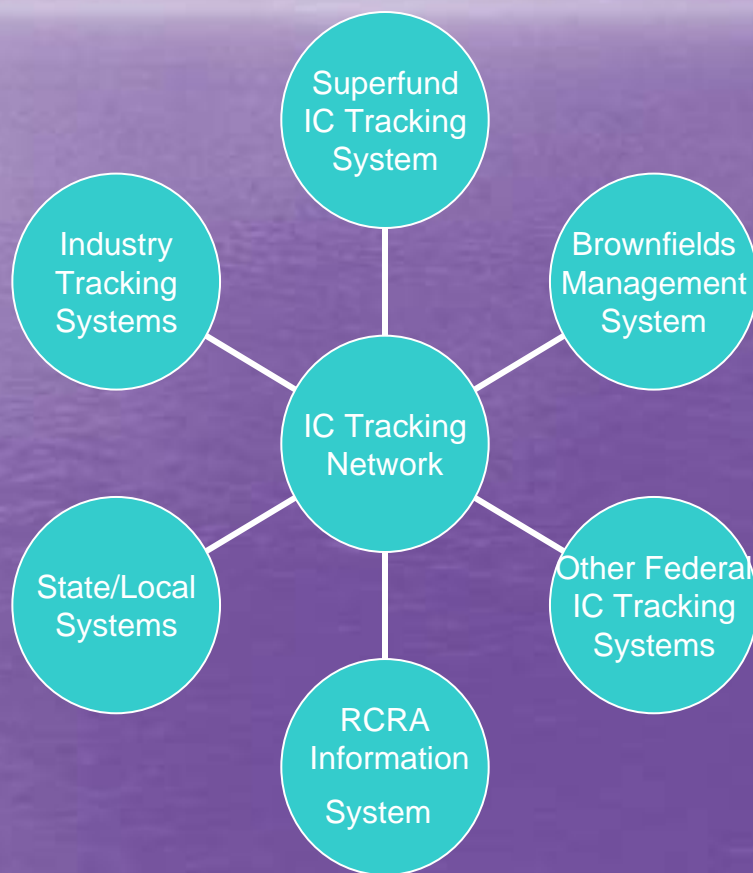
Overarching Institutional Controls

- Major effort currently underway in EPA to:
 - Develop additional guidance
 - Supplement/improve existing guidance
 - Improved governmental capacity - e.g., through training
 - Improve IC tracking

Overarching IC Tracking Concept

- Part of One Cleanup Program vision
- There is a need to coordinate roles and responsibilities for implementation, monitoring, reporting and enforcement of ICs
- A powerful coordination tool is an integrated IC tracking system that can:
 - Coordinate overlapping responsibilities
 - Minimize duplicative activities
 - Provide more current information on the status of ICs

IC Tracking - A network of Linked Systems



Overarching One Cleanup Program

- The One Cleanup Program is EPA's vision for how different cleanup programs at all levels of government can work together — and ensure that resources, activities, and results are effectively coordinated and communicated to the public.

Overarching One Cleanup Program

- It's goal is to improve the coordination, speed, and effectiveness of cleanups at the nation's contaminated sites
- Launched in April 2003
- Fact sheet and more information at www.epa.gov/oswer/onecleanupprogram

One Cleanup Program Initiatives

- The One Cleanup Program establishes activities that will lead to:
 - More consistent and effective cleanups
 - Clear and useful information about cleanups
 - Better performance measures.

Overarching

More Consistent and Effective Cleanups – AKA Program Coordination

- Area Wide “Cluster” Pilot Projects in each Region
 - Develop and promote new approaches for managing area-wide contamination problems and “clusters” of sites
 - Partners and plans will be identified to develop and demonstrate cross-program coordination and consistency in addressing the area-wide contamination problem
 - These pilot projects will coordinate the cleanup of several sites in a geographic area, involving different statutory/regulatory authorities
 - A summary of all regional pilots and success stories will be posted on the EPA website

Overarching

Program Coordination – Internal & External Collaboration

- Cleanup Programs Council
 - Provide analysis, identify potential resources and coordinate communication for priority, cross-program issues
- Federal Executive Environmental Policy Committee
 - Provide high level prioritization and coordination of cleanup issues among federal agencies

Overarching

Program Coordination - Internal & External Collaboration

- Formed three new Federal /State taskforces which are developing action agendas and plans
 - Groundwater Cleanup Task Force
 - Site Assessment Task Force
 - Long Term Site Stewardship Task Force

EPA Enforcement Priorities

- OECA selects multi-year national priorities focusing on specific environmental problems, risks, or noncompliance patterns
- Nearly a two year process, including issuing a FR notice requesting comments
- Two of the recommendations apply to the RCRA – CERCLA area
 - Mineral Processing
 - Financial assurance

financial assurance efforts Underway at Present

- Financial Assurance Enforcement Alert, April 2003
 - www.epa.gov/compliance/resources/newsletter/civil/enfalert/financial/pdf
- EPA and State (through ASTSWMO) are working together to improve our collective capacity in the area of financial assurance